

**AGREEMENT TO TRANSFER GUEA PROPERTIES TO THE CITY OF GARY,
GARY REDEVELOPMENT COMMISSION**

THIS AGREEMENT made as of February ___, 2007, is among Gary Urban Enterprise Association, Inc. ("GUEA"), the City of Gary ("City"), Gary Redevelopment Commission ("GRC"), and the Office of the Indiana Attorney General ("OAG"), collectively referred to as the "Parties."

WHEREAS, the Indiana legislature established a process by which the Indiana Economic Development Board could designate enterprise zones pursuant to Indiana Code § 4-4-6.1-4, which has been recodified as Indiana Code § 5-28-15-9, in order to encourage investment and job growth in distressed urban areas;

WHEREAS, pursuant to this authority an enterprise zone was designated for the City in 1985, to enhance economic development in a designated area of the City;

WHEREAS, GUEA was incorporated as an Indiana non-profit public benefit corporation on March 21, 1985, with the following stated purpose:

[T]o handle the Urban Enterprise Association duties and benefits as provided by state law for the benefit of Gary Urban Enterprise Zone as designated by the State of Indiana. It shall be the purpose of the Corporation to strengthen the Gary area economy by stimulating the development and redevelopment of portions of the community experiencing economic stagnation or decline. The Corporation shall: coordinate zone development activities; serve as a catalyst for zone development; promote Gary's Urban Enterprise Zone to outside groups and individuals; establish a formal line of communication with residents and businesses in our urban zone; and act as a liaison between residents, businesses, local governments and the state for any and all development activity that may affect Gary's Urban Enterprise Zone. The Corporation shall have all powers as provided by state law and shall have all the powers necessary to carry out the essential purposes as herein stated.

WHEREAS, the Indiana Economic Development Board, which had appointed GUEA as the Urban Enterprise Association for the Gary Urban Enterprise Zone, declined at its September 25, 2005 meeting to further extend the Gary Enterprise Zone beyond its original twenty year term;

WHEREAS, the GUEA's primary source of funding—the fees paid in lieu of inventory taxes—ended with the loss of the enterprise zone, thereby eliminating a consistent source of revenue to fund GUEA operations;

WHEREAS, the termination of the Gary Enterprise Zone and the loss of the fees paid in lieu of inventory taxes placed GUEA in a position that it could not continue its operations.

WHEREAS, under the circumstances stated above, the Office of the Attorney General ("OAG") filed a Verified Complaint for Appointment of Temporary Receiver and Injunctive Relief against GUEA in the Circuit Court of Marion County, Cause no. 49CO1-0510-MI-38959, on October 4, 2005, seeking a court-appointed receiver and other equitable relief, which suit remains pending ("Receivership Action") in order to insure that the assets of GUEA were preserved for the citizens of Gary;

WHEREAS, in accordance with Indiana Code § 23-17-22-2, the GUEA Board voted at its scheduled August 31, 2006 Board meeting to dissolve GUEA;

WHEREAS, the Redevelopment Commission of the City of Gary is charged with the statutory duty to plan, replan, develop, and redevelop property within the jurisdictional boundaries of the City of Gary, including the Emerson neighborhood in accordance with Indiana Code IC 36-7-14 et seq;

WHEREAS, the process for acquisition and sale of property for the Gary Redevelopment Commission is set forth in Indiana Code IC 36-7-14 et seq;

WHEREAS, the GUEA Board wants to ensure that the net assets of the corporation will be used for the benefit of the citizens of Gary, especially the residents of the Emerson residential area, which is within the Enterprise Zone;

NOW, THEREFORE, in consideration of the recitals, covenants, and agreements contained herein, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree to the following terms and conditions by which GUEA and/or its affiliate companies will transfer by quitclaim deed to the City the properties in which GUEA has title or legal interest as listed in Attachment A:

1. METHOD OF TRANSFER

All properties listed in Attachment A (hereinafter referred to as the "Parcels") shall be transferred by quitclaim deed to the City, and the transfers shall be recorded in the Office of the Recorder for Lake County, Indiana. The City shall have the financial and legal responsibility for preparing and recording the quitclaim deeds transferring title to the Parcels. The City shall work with GUEA and OAG to produce and execute the transfer documents.

2. PAYMENT TO GUEA

GUEA shall execute and deliver quitclaim deeds for each of its parcels to the City in order to permit the City to correct all title defects and remove all property tax liens against all of the parcels. All net proceeds from the sale or other disposition of the parcels shall be paid to the Trust (hereinafter described) after the Quietus process in the controller's Office of the City of Gary. Net proceeds shall be defined as all revenue received, either immediately or by promissory note or other delayed payment or the

economic value of any property or service received “in-kind,” less all reasonable expenses for the correction of title defects or for the removal of tax liens or for the maintenance of the parcel or for the demolition of improvements.

3. PROPERTY TITLES AND PROPERTY CONDITION

The City agrees to bear all financial and legal responsibility for any and all title issues and discrepancies, and the City agrees to accept all Parcels and any improvements thereon in their existing condition without warranty or representation of condition of any nature. The City expressly covenants and agrees to accept all Parcels “AS IS” and waives any and all claims of any nature that arise from, relate to or concern the condition of the Parcels and their improvements.

This provision shall not apply for those parcels where there is known environmental contamination and/or where reasonable due diligence would have discovered that fact. Any dispute in this regard shall be resolved through binding Arbitration with the American Arbitration Association. Each party shall be responsible for an equal share of the cost. The sole remedy in this regard shall be to pursue indemnification from the Trust and/or the Directors and Officers of GUEA elected or appointed prior to January 1, 2005.

4. REMOVAL OF PROPERTY TAX LIENS

The City shall initiate the process for the removal of all property tax liens against all of the Parcels, as provided by IC 6-1.1-36-7 within sixty 60 days of the date of transfer, and the City shall promptly provide in a timely manner to the OAG copies of all filings and applications before the Indiana Department of Local Government Finance, notices on hearings, meetings, or other proceedings relating to the removal of said liens in order to permit representatives of the OAG to attend and participate in such hearings, meetings, or other proceedings.

5. DEFINITION OF PROJECT AREAS

A. Emerson Neighborhood

The “Emerson Neighborhood” shall be defined generally as the area located within the boundaries of Interstate 90 to the north, 9th Avenue to the south, Massachusetts Street to the west and Interstate 65 to the east according to the map included in this agreement as Attachment B.

B. Airport Development Zone

The “Airport Development Zone” shall be defined generally as enclosed by the Gary shoreline of Lake Michigan to the north and a line formed by Cline Avenue south to 27th Avenue, 27th Avenue east to Colfax Street, Colfax Street south to Ridge Road, Ridge Road east to Burr Street, Burr Street north to 10th Avenue, 10th

Avenue east to Chase Street, and Chase Street north back to the Lake Michigan shoreline according to the map included in the agreement as Attachment B.

C. Northwest Regional Development Authority ("NRDA") Area

[To be determined in conjunction with the NRDA and inserted at a later date into this Agreement].

6. PROPERTY DEVELOPMENT TERMS

A. Return of Parcels to GUEA

The City covenants and agrees to return to GUEA, or such other entity as GUEA may designate, Parcel 25-44-0090-0026 (the GUEA Office Building) and Parcel 25-41-0056-0001 (the "School"), as well as any other parcels as may be selected by GUEA or the Trust (hereinafter described), immediately upon the removal of all property tax liens against these parcels, and/or within ten (10) days of receipt of a written request for the return of the parcels, so that the parcels may be used in a manner designated by GUEA for the benefit of the Emerson Neighborhood, as defined above. During any period that the City holds title to the GUEA Office Building or the School, the City shall not disturb the contents/personal property on those parcels without providing prior written notice to and approval from GUEA and/or the Trust. GUEA and/or the Trust shall have full access to the properties and the personal property at all times. GUEA or the Trust shall have an express right of specific performance with respect to the return transfer of the title to these parcels, which rights may be enforced by the OAG, in the sole and absolute discretion of the OAG. The returned parcels shall be transferred by quitclaim deeds, AS IS, without warranty of any nature from the City, and GUEA, or the Trust, shall be responsible for the recording of the deeds. Provided however, that prior to any reconveyance by the City, GUEA must submit a proposal specifying the intended use of the property, how the property will be sustained (financially and otherwise), and demonstrate that the proposed use is in the public interest.

B. Sale or Disposition of Parcels

For the twenty (20) years following the date of the transfer of the Parcels, the sale or disposition (as defined below) of the Parcels shall only be permitted pursuant to the following procedures, which shall be noted on the transferring deeds so as to become restrictions of record. Provided this provision may be waived in writing by the parties or any successor thereof, specifically including the Trust as the successor to GUEA, upon a showing that this provision will be an unreasonable hindrance to development.

Prior to any sale, disposition, development, mortgage, encumbrance or use (hereinafter collectively referred to as "sale or disposition") of any parcel:

1. At least thirty (30) days prior to any sale or disposition of any parcel the City shall provide written notice to the OAG to the attention of the Chief Counsel of Litigation, to the United States Attorney for the Northern District of Indiana (the "US

Attorney”), to the Indiana Inspector General (“IG”), and to the NRDA to the attention of the Executive Director, (hereinafter collectively referred to as “Noticees”), as well as publishing notice in all Gary newspapers and in one newspapers having County-wide paid subscriptions, and on the City’s website to inform the public of the sale or disposition of any parcel, (except those being returned to GUEA or the Trust) and providing the public with an opportunity to make comment. The notice shall include a street address and parcel number of the parcel, the parties including owners, users, beneficiaries, affiliates, and all real parties in interest, involved in the transaction, the consideration being offered and the principal terms and conditions of the sale or disposition. Any of the Noticees shall have the absolute right to delay any such sale or disposition of any parcel for up three (3) months upon providing written notice, within thirty (30) days of its receipt of the City’s notice, to the City of a request for such delay for purposes of evaluation and investigation. These terms and conditions shall apply to all of the Parcels wherever located.

2. The sale or disposition of any parcel, other than those returned to GUEA or the Trust, shall be considered in a public meeting of the Gary City Council, duly noticed by law, and shall be open for reasonable public comment at such meeting prior to authorizing any such sale, development or use of any parcel. Any such authorization shall be made by majority vote at the public meeting, when applicable. These terms and conditions shall apply to all of the Parcels wherever located.

3. All net proceeds, as defined earlier, realized from the sale or disposition of any parcel shall be deposited immediately into the Emerson Neighborhood Trust Fund, which shall be established by GUEA and the OAG. This term and condition shall apply to all of the Parcels wherever located, unless otherwise agreed to by the parties or any successor thereof, specifically including the Trust as the successor to GUEA.

4. Non-buildable Parcels (having twenty-five (25) feet or less of frontage) located within the Emerson Neighborhood shall first be offered to the residents of the Emerson Neighborhood, who have maintained a continual residency or business within the Emerson Neighborhood for at least one (1) year prior to making application for the parcel, before permitting third parties to acquire the parcels, unless the proposed use of the parcels is for residential or commercial development of multiple contiguous parcels. If a development is proposed, then the development must occur within an agreed upon time period from the acquisition of the parcels, or the parcels are to be re-conveyed to the City, GRC, or other transferring entity, which entity shall return only the purchase price for the parcel (including any refund that may be required from the Trust) and made subject to the terms and conditions set forth in Section 6B of this agreement. The parties agree that the City, GRC, or the OAG may enforce this provision.

5. When the parcel is offered to the residents of the Emerson Neighborhood, priority shall be given to those who have maintained the parcel or who describe specific needs for the parcel. Appropriate restrictions may be placed on the sale of any parcels to Emerson Neighborhood residents in order to detect, prevent, and correct the use of any

such resident as a “front” for other parties who are not residents of the area. The sales price and all other terms and conditions shall be determined by the Trust.

6. Prior to the sale or disposition of any parcel located within the Emerson Neighborhood, the Emerson Neighborhood Residents Council shall be requested to provide comments to the City, GRC or other entity holding title, regarding the proposed sale or disposition of the parcel.

7. Parcels located within the Airport Development Zone shall first be offered to the NRDA, and thereafter to the Gary Airport Authority before permitting the sale or disposition of the parcel by the City, GRC or other entity holding title. If the NRDA or Gary Airport Authority provides written notice, within thirty (30) days of its receipt of the City’s notice, that it will acquire the parcel, then the parcel is to be conveyed to the requesting party, subject to the condition that all net proceeds, as defined above, from the subsequent sale or disposition of the parcel by the requesting party shall be paid to the Trust at the time of closing.

8. Parcels located within the NRDA Area shall first be offered to the NDRA before permitting the sale or disposition of the parcel by the City, GRC or other entity holding title. If the NRDA provides written notice that it will acquire the parcel, the parcel is to be conveyed to the NRDA, subject to the condition that all net proceeds, as defined above, from the subsequent sale or disposition of the parcel by the NRDA shall be paid to the Trust at the time of closing.

9. All parcels not located within the Emerson Neighborhood area, Airport Development Zone, or NRDA area, which have not been requested to be returned to GUEA or the Trust, shall be subject to sale or disposition by the City or GRC subject to the condition that all net proceeds, as defined above, from the sale or disposition shall be paid to the Trust at the time of closing.

7. MAINTENANCE AND UPKEEP OF PROPERTIES

The City covenants and agrees to be responsible for the general maintenance and upkeep, including compliance with all existing codes regarding property use and maintenance, of all the Parcels transferred to it and assumes all liabilities associated with the ownership of all of the Parcels. The reasonable, customary, and ordinary cost for the maintenance and upkeep of the parcels shall be deducted from the gross sale price.

8. AUDIT AND ENFORCEMENT AUTHORITY

The City agrees that all transactions regarding, related to, or concerning the Parcels shall be subject to audit by the State Board of Accounts. The City further covenants and agrees that the OAG shall have the absolute right to have all records, transactions, proceedings, and other materials that relate to, arise from, or concern the Parcels to be subject to special audits upon providing thirty (30) days prior written notice to the City. An independent auditor shall be agreed upon by the City and the OAG, and the audit

costs shall be evenly divided between the City and the Trust. The City shall fully cooperate in all such special audits and shall provide all documentation and materials requested, as well as make appropriate City employees and consultants available to the auditors when requested. All audits and special audits shall be published and available to the public for review. If any discrepancies or other issues arise from any audit or special audit, the OAG shall have the authority to investigate and pursue claims on behalf of the residents of the Emerson Neighborhood and/or the Emerson Neighborhood Trust Fund. The OAG shall have the further right to pursue and enforce all of the terms and conditions of this Agreement and all claims arising under this Agreement by GUEA, the Trust, City or GRC. The City and GRC waive any and all defenses concerning the standing or authority of the OAG to pursue such claims. If the pursuit of claims requires the filing of litigation, the venue of the litigation shall be determined by the OAG, and the parties agree that the OAG, may, in its sole and absolute discretion, select venue under IC 23-17-24-2(a).

9. TRUST ASSETS/FIDUCIARY DUTIES

All of the parties to this Agreement covenant, agree, and acknowledge that all of the parcels were acquired by GUEA for the express purpose of benefiting the Emerson Neighborhood residents and businesses, and as such, are properly designated as assets to be held in a public charitable trust, over which GUEA, the Trust, the City and GRC and their respective successors, shall have fiduciary duties. No modification, amendment, or other change in the terms and provisions, and no waiver in whole or part of any term or condition of this Agreement may be made in violation of the fiduciary duty owed to the Emerson Neighborhood residents and businesses.

10. DEFAULTS AND REMEDIES

A. Events of Default

The occurrence of any of the following shall constitute an "Event of Default" by the City and/or GRC:

1. The breach by the City or GRC of any of the representations, covenants, warranties or obligations of Gary under this Contract;
2. The failure by the City or GRC to pay any amount due to another party under the terms of this Contract;
3. The institution against the City or GRC of any proceeding alleging the City or GRC is insolvent or unable to pay its obligations as they mature; provided however, that this shall not be considered an event of default, if this matter is dismissed within ninety (90) days of the filing or such other reasonable time.
4. The City or GRC becomes a municipal corporation in dissolution under any law;

5. The use or nonuse of any of the parcels which is not in the best interest of the citizens of The Emerson Neighborhood as determined by the OAG;

6. Any act or omission by the City or GRC or its agents that is illegal shall occur; and/or

7. The parcels are maintained in a way that poses a serious threat to the health, safety or welfare of the citizens of Gary.

B. Notice and Cure

The OAG shall give written notice to the City and/or GRC of any Event of Default. The City or the GRC shall have thirty (30) days after notice to cure. If the City or the GRC does not cure, the OAG may exercise any of the remedies set forth in 3 below.

C. Remedies

1. Any or all of the parcels can be required to be immediately transferred to the Trust or any other entity designated by the OAG.

2. The City and/or GRC shall be responsible for all expenses or damages incurred as a result of the Event of Default. The foregoing remedies are in addition to all other remedies available to any party at law or in equity.

11. INDEMNIFICATION

The City and/or GRC agrees to indemnify GUEA, Trust, and the OAG against all threats, demands, claims, and causes of action of whatever kind or nature, in law or equity, that arise from, relate to or concern the terms and conditions of this Agreement or any performance under this Agreement, which may now exist or hereinafter arise, except for gross negligence or willful misconduct of GUEA, Trust or the OAG.

12. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof. There are no other agreements of any nature among them with respect to the subject matter of this Agreement. This Agreement may not be altered, modified, or amended except by a writing signed by all parties. No term or provision of this Agreement may be waived except by a writing signed by the party charged with making such waiver. This Agreement shall be deemed to have been mutually drafted and shall not be construed more strictly against any one party. The captions within this Agreement shall not be considered part of the Agreement but have been inserted solely for the convenience of the parties.

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT AS OF THE DATE AND YEAR FIRST ABOVE WRITTEN.

“GUEA”
GARY URBAN ENTERPRISE ASSOCIATION

“City”
THE CITY OF GARY

Charlie Brown, Chairman

Rudolph Clay, Mayor

“OAG”
OFFICE OF INDIANA ATTORNEY GENERAL

“GRC”
GARY REDEVELOPMENT COMMISSION

Stephen Carter, Attorney General

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